



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Westinghouse Electric Corporation
File: B-224492
Date: August 6, 1986

DIGEST

Protest that specifications in a request for quotations are unduly restrictive is untimely where the protest was filed after the closing date set for receipt of quotations. Protester's alleged reliance on oral advice from the contracting officer that the specifications were a "reference point only" was unreasonable where such advice was inconsistent with the clear meaning of the specifications and with the fundamental principle that an agency may not solicit quotations on one basis and then make award on another basis.

DECISION

Westinghouse Electric Corporation protests the issuance of a delivery order to Haworth, Inc. by the Internal Revenue Service (IRS) under the General Services Administration's multiple award Federal Supply Schedule (FSS) for office furniture. We dismiss the protest because it is untimely.

The IRS issued a request for quotations (RFQ) to FSS vendors on June 30, 1986 soliciting prices for specified furniture components. Westinghouse alleges that the specifications for the furniture were unduly restrictive of competition and could only be met by Haworth. Westinghouse states that it raised its concerns with the contracting officer before responding to the RFQ, and was informed that the specifications were a "reference point only" and that Westinghouse's products would be acceptable. On July 22, 1986, however, the protester was notified that award had been made to Haworth notwithstanding Westinghouse's lower priced quotation.

Our Bid Protest Regulations provide that protests based on apparent improprieties in a solicitation must be filed prior to bid opening or the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1986). Since the alleged restrictiveness of the specifications clearly was apparent to Westinghouse upon reading the RFQ, but Westinghouse did not protest to our Office until after contract award, the protest is untimely. See American Sterilizer Co., B-212933, Jan. 26, 1984, 84-1 CPD ¶ 122.

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Although Westinghouse alleges that it did raise its concerns about the specifications with the agency and was told, in effect, that the specifications were guidelines only, we think that Westinghouse could not reasonably rely on any such advice.^{1/} The specifications clearly were stated as firm requirements, and not as mere guidelines or reference points. For example, the specifications protested by Westinghouse include requirements that "all panels shall have a thickness of a least two (2) inches and no wider than three (3) inches" and that "all top rails shall be aluminum extrusions." (Emphasis added.) Consequently, the agency's alleged oral advice clearly was inconsistent with the terms of the request for quotations. Furthermore, the alleged oral advice was also inconsistent with the fundamental principle that an agency may not solicit quotations on one basis and then make award on another basis. See Discount Machinery and Equipment, Inc., B-220949, Feb. 25, 1986, 86-1 CPD ¶ 193.

Accordingly, to the extent that Westinghouse may have relied on oral advice from the agency and as a result, may have believed that it was unnecessary to protest the specification requirements, we find that this reliance was unreasonable. In our view, the protester acted at its own risk when it relied on advice that was inconsistent with both the specifications themselves and with a fundamental principle of procurement law. See Wharton Econometric Forecasting Assocs., B-218112, June 6, 1985, 85-1 CPD ¶ 647.

The protest is dismissed.

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^{1/} We also note that there is no evidence that this communication of Westinghouse's concern to the agency constituted a formal protest to the agency. In fact, it appears that this was an oral communication, and therefore, was insufficient to constitute a protest, which must be in writing. See K-II Construction, Inc., B-221661, Mar. 18, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 270.